

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MICROSOFT CORPORATION, a Washington
corporation,

Plaintiff,

-against-

AGA SOLUTIONS, INC., a New York corporation,
d/b/a/ ADVANCED SOFTWARE SOLUTIONS and
ADVANCED COMPUTER SOLUTIONS;
MITCHELL S. ACKERMAN, a/k/a SCOTT
SIMON, WANTAMANSION, and MEGAHERTZ932,
AN INDIVIDUAL; and LEE K. ACKERMAN, a/k/a
PASSPORT2002, an individual,
Defendants.

ORDER

05CV5796 (DRH) (MLO)

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HURLEY, District Judge:

Presently before the Court is the motion of Plaintiff Microsoft Corporation (“Plaintiff”) for entry of default against defendant AGA Solutions Inc, and Mitchell Ackerman.¹ The motion is granted as to AGA Solutions Inc. and denied as to Mitchell Ackerman.

The relevant background is as follows:

On June 20, 2007 U.S. Magistrate Judge Michael Orenstein issued a Report and Recommendation that, given the failure of AGA Solutions and Mitchell Ackerman to appear at two pretrial conferences, 1) the answer of Defendants Mitchell Ackerman and AGA Solutions, Inc. be stricken; 2) Plaintiff be permitted to seek a default judgment against Defendants Mitchell Ackerman and AGA Solutions, Inc. and 3) Defendant Lee Ackerman be permitted to seek a default judgment on her cross-claim against Mitchell Ackerman. On June 21, 2007, Defendants

¹ The Court notes that the application is for a default and Plaintiff specifically requested that the issue of default judgment be deferred until the liability portion of the case is resolved as to defendant Lee Ackerman. *See* Pl.’s Motion at 5.

were served with a copy of the Report and Recommendation. By Order dated July 17, 2007, this Court adopted the Report and Recommendation of Judge Orenstein.

Although Mitchell Ackerman did not file objections to the Report and Recommendation, he did file a letter addressed to Judge Orenstein advising that he was in the hospital on the date of the conferences. Moreover, the Court notes that the docket sheet for this matter reflects that, since this Court's July 17, 2007 Order, Mitchell Ackerman has appeared before Judge Orenstein for both of the two scheduled conferences. Because defaults are not favored and because Mitchell Ackerman has appeared and indicated a desire to contest the action, the Court exercises its discretion and denies the application for a default against Mitchell Ackerman. *See generally* Wright and Miller, 10A *Federal Practice and Procedure* § 2682 at 18.

With respect to Defendant AGA Solutions the application for a default is granted. AGA Solutions Inc. has not appeared at any of the mandatory court conferences, has not answered counterclaims asserted against it and no new attorney has entered an appearance on its behalf.

ACCORDINGLY, IT IS HEREBY ORDERED that the motion of Plaintiff Microsoft Corporation ("Plaintiff") for entry of default is denied as to defendant Mitchell Ackerman and granted as to defendant AGA Solutions Inc. The Clerk of Court is directed to note the default of Defendant AGA Solutions Inc.

SO ORDERED.

Dated: Central Islip, N.Y.
December 7, 2007

/s/
Denis R. Hurley,
United States District Judge